



REPORT

OF

THE COMMITTEE OF THE OVERSEERS

OF

HARVARD COLLEGE,

APPOINTED TO VISIT

THE LAW SCHOOL

IN 1849.

BOSTON:

PRINTED BY JOHN WILSON, SCHOOL STREET.

1850.

Copy 2



Harvard University, Board of Overseers.

REPORT
OF
THE COMMITTEE OF THE OVERSEERS
OF
HARVARD COLLEGE,
APPOINTED TO VISIT
THE LAW SCHOOL
IN 1849.

BOSTON:
PRINTED BY JOHN WILSON, SCHOOL STREET.
1850.

Copied 2m

LC 1161
H3
copy 2

IN BOARD OF OVERSEERS,

February 1, 1849.

Voted, That Hon. PELEG SPRAGUE, Hon. SIMON GREENLEAF, CHARLES SUMNER, Esq. Hon. ALBERT H. NELSON, and PELEG W. CHANDLER, Esq. be a Committee to visit the Law School during the ensuing year. [Hon. WILLIAM KENT was afterwards substituted for Mr. GREENLEAF, who declined.]

IN BOARD OF OVERSEERS,

February 7, 1850.

Ordered, That the Report of the Committee appointed to visit the Law School be printed.

Attest,

ALEXANDER YOUNG,

Secretary.

REPORT.

THE Committee appointed by the Overseers of Harvard University to visit the Law School, performed that service, Nov. 7, 1849. Among their number present on the occasion was Hon. WILLIAM KENT, of New York, who gratified his associates very much by coming a long distance to join in this duty.

The attention of the Committee was first directed to the actual condition of the School, and its advantages as a place of legal education. Here there was occasion for lively satisfaction. The number of students was one hundred, assembled from all parts of the Union, and constituting a representation of the whole country. Their attendance upon the lectures and other exercises, though entirely voluntary, had been full and regular; while their industry, good conduct, and intelligent reception of instruction, had been a source of peculiar pleasure to their professors.

Lectures had been given, during the current term, by Professor PARKER, upon Equity Pleadings, Bailments, and Practice; by Professor PARSONS, upon Blackstone's Commentaries, the Admiralty Jurisdiction, Shipping, Bills and Notes; and by Professor ALLEN, upon Real Law and Domestic Relations. In treating most of these branches, the professors adopted certain text-books, of acknowledged authority, — to which the attention of the students was especially directed, — as the basis of their remarks. They

also examined the students in these books, and in the leading cases illustrating the subject.

This system of instruction, which has been continued in the School since its earliest foundation with substantial uniformity, has shown itself to be well adapted to the end in view. It is essential that the student should be directed to certain text-books. These he must study carefully, devotedly; nor can he properly omit to go behind these, and verify them by the decided cases. No day should pass without its fulfilled task in these labors. In this way he will be prepared for the examinations, and will be enabled to appreciate the explanations and illustrations of the lecture-room, throwing light upon the text, and showing its application to practical cases. The labors of the student will qualify him to comprehend the labors of the instructor. Still further, examinations in the text-books, accompanied by explanations and illustrations, help to interest the student in the subject, and to bring his mind directly in contact with the mind of his instructor.

These same purposes are also promoted by the favorite exercise of moot-courts, which are held twice a-week, by the different professors in succession. A case, involving some unsettled question of law, is argued by four students, who have been designated so long previously as to allow time for careful preparation; and, at the close of the arguments, an opinion is given by the presiding professor, commenting upon the doctrines maintained on each side, and deciding between them. These occasions are found to enlist the best attention, not only of those immediately engaged in them, but of the listeners; while some of the efforts which they call forth from the students are said to show distinguished research and ability. Here, on this mimic field, are trained those forensic powers which are destined to be the pride and ornament of the bar.

We should not neglect to notice the advantages for study afforded by the extensive library of the Law School. This is separate from the Public Library of the University, and contains about fourteen thousand volumes. Here are found

all the American Reports, and the Statutes of the United States, as well as those of all the States, a regular series of all the English Reports, including the Year-books, and also the English Statutes, as well as the principal treatises in American and English law; also a large body of works in the Scotch, French, German, Dutch, Spanish, Italian, and other foreign law; and an ample collection of the best editions of the Roman or Civil Law, with the works of the most celebrated commentators upon that ancient law. This library is one of the largest and most valuable, relating to law, to be found in the country. As an aid to study, it cannot be estimated too highly. Here the student may range at will through all the demesnes of jurisprudence. Here he may acquire a knowledge of the books of his profession, — learning their true character and value, — which will be of incalculable service to him in his future labors. Whoso knows how to use a library possesses the very keys of knowledge. Next to knowing the law is knowing where the law is to be found.

There is another advantage of a peculiar character, afforded by the Law School, in the opportunity of kindly and instructive social relations among the students, and also between the students and their instructors. Young men, engaged in similar pursuits, are professors to each other. The daily conversation concerns their common studies, and contributes some new impulse. Mind meets mind, and each derives strength from the contact. But the instructor is also at hand. In the lecture-room, and also in private, he is ready to afford counsel and help. The students are not alone in their labors. They find an assistant at every step of their journey, ready to conduct them through its devious and toilsome passes, and to remove the difficulties which throng the way. This twofold companionship of the students with each other, and of the students with their instructors, is full of beneficent influences, not only in the cordial intercourse which it begets, but in the positive knowledge which it diffuses, and in its stimulating effect upon the minds of all who enjoy it.

In dwelling on the advantages of the Law School, as a

seat of legal education, the Committee place side by side with the lectures and exercises of the professors, the profitable opportunities afforded by the library, and by the fellowship of persons engaged in the same pursuits; all echoing to the heart of the pupil, as from the genius of the place, constant words of succor, encouragement, and hope.

From the present prosperity of the School, the Committee have been led to look back to its early beginning, to observe its growth, and to commemorate with gratitude its benefactors.

It need hardly be added, that a Law School was not embraced by our forefathers in the original design of the College, and that it was engrafted upon the ancient stock at quite a late period. The College was first planted at a time when the law was not treated, even in England, as a part of academic instruction. The first settlers of our country could not be expected to establish professorships unknown in the land from which they had parted; nor, indeed, in those early days, and for some time later, does there appear to have been occasion for instruction in the law. In fact, the law, as a science, as a profession, or as a practical instrument of government, was scarcely observed. Lawyers were not known as a class, nor was their business respected. Mr. Lechford, of Clement's Inn, who had emigrated not long after the foundation of the College, — hoping to gain a livelihood as an attorney, — being cautioned at a quarter court “not to meddle with controversies,” returned again to England. But, as the Colony grew, it gradually laid hold of the common law, and, for some time before the Revolution, claimed this law as a birthright of the inhabitants.

The history of the Library of the University exposes the poverty of the means afforded by it in those early days for the study of the law. In the Catalogue of the library, published in 1727, we find but *seven* volumes of the common law. These are Spelman's Glossary, Pulton's Collection of Statutes, Keble's Statutes, Coke's First and Second Institutes, and a couple of odd volumes of the Year-books.

These were the means afforded for the study of our law by the library which Cotton Mather described, some time before the publication of this catalogue, as the "best furnished that could be shown anywhere in all the American regions." Since books are the very instruments of learning, it must follow, if these were wanting at Harvard College, that the study of the law could make little advance. Happily all this is now changed.

The first professorship of law in the University was established in 1815, upon a foundation partly supplied by an ancient devise of ISAAC ROYALL, Esq.; — a munificent gentleman of ample fortune, who, being connected by blood and marriage, as well as by political opinions, with the principal royalists of Massachusetts, forsook the country with them at the commencement of the Revolution, and died at Kensington in England, about the year 1781. Though an exile, he did not forget the land he had left. Thither "his heart untravelled fondly turned," before his death. By his will, which is recorded in the Probate Office in Boston, he devised to the town of Medford in Massachusetts, where he had resided, certain lands in Granby, for the support of schools. The residue of his estate in that town, and certain other lands in the county of Worcester, he devised to the Overseers and Corporation of Harvard College, "to be appropriated towards the endowing a *Professor of Laws in the said College*, or a Professor of Physic and Anatomy, whichever the said Overseers and Corporation shall judge to be best for the benefit of the said College." The capital, with its accumulation resulting from the property thus devised, is \$7,943.63, yielding an annual income of about four hundred dollars. It is believed that the University and the lovers of the law are indebted to the late Hon. JOHN LOWELL, while a member of the Corporation of the University, for calling these funds — as yet unappropriated to either object of the devise — from their sleep in the treasury, by procuring the establishment of a professorship of law in 1815, which was ordered, for the present, to bear the name of *Royall*, in honor of him whose will was now first executed in this regard. The residue of

the funds for its support have been hitherto supplied by the University, mainly from the fees paid by students of law. The Hon. ISAAC PARKER, late Chief Justice of this Commonwealth, was appointed the first professor.

In 1817, the Hon. ASAHEL STEARNS was placed upon another foundation, established by the University. The statutes of this professorship required him to open and keep a School in Cambridge, for the instruction of the graduates of the University, and of others prosecuting the study of the law; and, in addition to prescribing to his pupils a course of study, to examine and confer with them upon the subjects of their studies, to read to them a course of lectures, and generally to act the part of a tutor, so as to improve their minds, and assist their acquisitions. From this time may be dated the establishment of the Law School of the University.

Chief Justice Parker never resided in Cambridge, but was in the habit, in the performance of his duties as professor, of reading a course of lectures every summer to the students of the Law School, and to the senior class of undergraduates. These were of an elementary nature, adapted to the youthful minds of his audience, of which the larger part belonged to the undergraduates, and were characterized by that free and flowing style which so eminently marks the judicial opinions of this judge. They comprised a view of the Constitutions of the United States and of Massachusetts, with a particular notice of the early juridical history of New England, explaining the origin of its laws and institutions. Professor Stearns, who resided in Cambridge, was occupied more immediately with the duties of instruction in law. He was accustomed to hear recitations from the students of the School in the more important text-books, to preside in moot-courts, and to read lectures on various interesting titles of law. The valuable work on Real Actions, so well known by the lawyers of the country, was prepared by him in the discharge of his duties as professor, and read to his pupils in a course of lectures. The first edition was dedicated by the author "to the students of Harvard University, as a testimo-

nial of his earnest desire to aid them in the honorable and laborious study of American jurisprudence.”

The number who resorted to the Law School at this period was comparatively small. From 1817 to 1830, the largest class for any single year was eighteen, and the average annual number was not more than eight. The first important step, however, was taken. The law was admitted within the circle of University studies; while, by the learning and reputation of its professors, the cause of legal education was commended, and the idea of a Law School was shown to be practicable.

In 1829, Chief Justice Parker and Professor Stearns resigned their places, and a new epoch in the history of the School began. The Hon. NATHAN DANE, emulating the example of Viner in England, from the profits of his extensive Abridgment and Digest of American Law, established a new professorship, still called from his name; to which, according to his request, the late JOSEPH STORY, at that time a resident of Salem, and an Associate Justice of the Supreme Court, was appointed. In his communication to the University, appropriating the funds for this endowment, the venerable founder marked out the duties of the new station as follows: “It shall be the duty of the professor to prepare and deliver, and to revise for publication, a course of lectures on the five following branches of law and equity, equally in force in all parts of our federal republic, — namely, the law of nature, the law of nations, commercial and maritime law, federal law, and federal equity, — in such wide extent as the same branches now are, and from time to time shall be, administered in the courts of the United States, but in such compressed form as the profession shall deem proper; and so to prepare, deliver, and revise lectures thereon, as often as the said Corporation shall think proper.” The funds originally given by Mr. Dane amounted to \$10,000, to which were added \$5,000 on his death, making the sum total of his donation, \$15,000. Mr. Justice Story removed to Cambridge, and commenced his new career, as Dane Professor of Law, in August, 1829, with an inaugural discourse, in

which the honorable nature of legal studies, the arduous labors required in their pursuit, and the duties upon which he was about to enter, were reviewed with singular power and beauty. At the same time, JOHN HOOKER ASHMUN, Esq. a lawyer of remarkable acuteness and maturity, who, though young, had shown already the capacity of a great jurist, was associated with him as Royall Professor of Law.

The Law School, from the exertions of the new professors, received a fresh impulse. The number of students increased, and the fame of the institution was extended. Professor Story, though necessarily absent much in the discharge of his judicial labors, yet found time to take an active part in the duties of teaching. He presided in the moot-courts and lecture-rooms, and, by his earnest encouragements and profuse instructions, not less than by his illustrious example, warmed the classes with ardor in their studies. He continued in this sphere, giving and receiving happiness from his labors, for a period of sixteen years; when, desirous as age advanced to lay down some of his cares, he proposed to resign his seat on the bench, and dedicate the remainder of his days to his professorship. As he was about to make this change, he was arrested by death, Sept. 10, 1845.

Professor Ashmun had already fallen, much regretted, by his side, in 1833, at the early age of thirty-three. Besides the moot-courts, the examinations in the text-books, and oral expositions of the law, this learned teacher had occasionally read written lectures. Among these was a valuable course on medical jurisprudence, equity, and the action of assumpsit. His place was supplied by an eminent jurist, Professor GREENLEAF, who labored for a long period with rare success, beloved by a large circle of grateful pupils, and by his associates in instruction, till 1848, when he was compelled by ill health to resign his connection with the Law School. Among his distinguished labors, in the discharge of his duties as professor, is a work on the Law of Evidence, which is now a manual in the courts of our country, and one of the classics of the common law.

Professor Greenleaf, on the death of Professor Story, was

made Dane Professor. HON. WILLIAM KENT, of New York, occupied for a year the place of Royall Professor, when he felt constrained by circumstances to return to New York. Since then, HON. THEOPHILUS PARSONS has been Dane Professor; and HON. JOEL PARKER, late Chief Justice of New Hampshire, Royall Professor. HON. FRANKLIN DEXTER, for a brief period, has lectured on the Constitution of the United States, and the Law of Nations; and the HON. LUTHER S. CUSHING, on Parliamentary Law and Criminal Law. HON. FREDERICK H. ALLEN, late a Judge in Maine, as University Professor, without any permanent foundation, is at present co-operating with Professor Parsons and Professor Parker in the general duties of the School.

In reviewing the history of the School, the Committee, while remembering with grateful regard all its instructors, pause with veneration before the long and important labors of STORY. In the meridian of his fame as a judge, he became a practical teacher of jurisprudence, and lent to the University the lustre of his name. The *Dane Professorship*, through him, has acquired a renown which places it on the same elevation with the *Vinerian Professorship* at Oxford, to which we are indebted for the Commentaries of Sir William Blackstone. These "twin stars" shine each in different hemispheres, but with rival glories. Nor is this the only parallel; for Viner, like our Dane, endowed the professorship, which bears his name, from the profits of his immense Abridgment of the Law. In the performance of his duties, Professor Story prepared and published the most important series of juridical works which have appeared in the English language in our age, embracing a comprehensive treatise on the Constitution of the United States, a masterly exposition of that portion of international law known as the Conflict of Laws, and commentaries on Equity Jurisprudence, Equity Pleading, and various branches of Commercial Law.

The character of his labors, and their influence upon the School, will appear from an interesting passage in his last will and testament, bearing date Jan. 2, 1842. After be-

queathing to the University several valuable pictures, busts, and books, he proceeds as follows: "I ask the President and Fellows of Harvard College to accept them as memorials of my reverence and respect for that venerable institution at which I received my education. I hope it may not be improper for me here to add, that I have devoted myself as Dane Professor for the last thirteen years to the labors and duties of instruction in the Law School, and have always performed equal duties and to an equal amount with my excellent colleagues, Mr. Professor Ashmun and Mr. Professor Greenleaf, in the Law School. When I came to Cambridge, and undertook the duties of my professorship, there had not been a single law-student there for the preceding year. There was no law-library, but a few old and imperfect books being there. The students have since increased to a large number, and, for six years last past, have exceeded one hundred a year. The Law Library now contains about six thousand volumes, whose value cannot be deemed less than twenty-five thousand dollars. My own salary has constantly remained limited to one thousand dollars, — a little more than the interest of Mr. Dane's donation. I have never asked or desired an increase thereof, as I was receiving a suitable salary as a Judge of the Supreme Court of the United States; while my colleagues have very properly received a much larger sum, and of late years more than double my own. Under these circumstances, I cannot but feel that I have contributed towards the advancement of the Law School a sum out of my earnings, which, with my moderate means, will be thought to absolve me from making, what otherwise I certainly should do, a pecuniary legacy to Harvard College, for the general advancement of literature and learning therein."

It appears from the books of the Treasurer, that the sums received from students in the Law School, during the sixteen years of his professorship, amounted to \$105,000. Of this sum, only \$47,200 were spent in salaries, and other current expenses of the School. The balance, amounting to \$57,200, is represented by the following items, viz. : —

Books purchased for the Library and for students, including about \$1,950 for binding, and deducting the amount received for books sold	\$29,000
For the enlargement of the Hall, containing the library and lecture-rooms, in 1844-5	12,700
The Fund remaining to the credit of the School in August, 1845	15,500
	<hr/>
	\$57,200

Thus it appears that the Law School; at the time of Professor Story's death, actually possessed, independent of the somewhat scanty donations of Mr. Royall and Mr. Dane, funds and other property, including a large library and a commodious edifice, amounting to upwards of *fifty-seven thousand dollars*, all of which had been earned during Professor Story's term of service. As he declined, during all this time, to receive a larger annual salary than \$1000, and as his high character and the attraction of his name doubtless contributed to swell the income of the School, it will be evident that a considerable portion of this large sum may justly be regarded as the fruit of his bountiful labors contributed to the University.

The Committee, while calling attention in this way to the extent of the pecuniary benefaction which the Law School has received from Professor Story, have felt it their duty to urge upon the Government of the University the propriety of recognizing this in some suitable form. The name of Royall, attached to one of the professorships, keeps alive the memory of his early beneficence. The name of Dane, attached to the professorship on which Story taught, and sometimes to the edifice, containing the library and lecture-rooms, and also to the Law School itself, attests, with triple academic voice, a well-rewarded donation. But the contributions of Royall and Dane combined — important as they have been, and justly worthy of honorable mention — do not equal what has been contributed by Story. At the present moment, Story must be regarded as the largest pecuniary benefactor of the Law School, and one of the largest pecuniary benefactors of the University. In this respect, he stands before Hollis, Alford, Boylston, Hersey, Bowdoin, Erving,

Eliot, Smith, McLean, Perkins, and Fisher. His contributions have this additional peculiarity, that they were munificently afforded, — from his daily earnings, — not after death, but during his own life ; so that he became, as it were, the executor of his own will. In justice to the dead, as an example to the living, and in conformity with established usage, the University should enroll his name among its founders, and inscribe it, in some fit manner, upon the School which he has helped to rear.

Three different courses have occurred to the Committee. The edifice containing the library and lecture-rooms may be called after him, *Story Hall*. Or the branch of the University devoted to law may be called the *Story Law School*; as the other branch of the University devoted to science is called, in gratitude to a distinguished benefactor, *Lawrence Scientific School*. Or, still further, a new and permanent professorship in the Law School may be created, bearing his name.

If the latter suggestion should find acceptance, the Committee would recommend that the professorship be of *Commercial Law and the Law of Nations*. It is well known, that it was the earnest desire of Professor Story, often expressed, in view of the increasing means of the Law School, and of the necessity of meeting the increasing demands for education in the law, that professorships of both these branches should be established. He regarded that of commercial law as most needed. His own pre-eminence in this department is shown in his works, and especially in his numerous judicial opinions. And only a few days before his death, in conversation with one of this Committee, hearing that it had been proposed by some of the merchants of Boston, on his resignation of the seat which he had held on the bench for thirty-four years, to cause his statue in marble to be erected, he said, “ If the merchants of Boston wish to do me honor in any way on my leaving the bench, let it not be by a statue, but by founding in the Law School a professorship of commercial law.” With these generous words he embraced in his vows at once his favorite law, and his favorite University.

The subject of commercial law is of great and growing practical importance. Every new tie of commerce, in the multiplying relations of mankind, gives new occasion for its application. Besides the general principles of the law of Contracts, it comprehends the law of Bailments, Agency, Partnership, Bills of Exchange and Promissory Notes, Shipping and Insurance; — branches of inexpressible interest to the lawyer, the merchant, and, indeed, to every citizen. The main features of this law are common to all commercial nations: they are recognized with substantial uniformity, whether at Boston, London, or Calcutta; at Hamburg, Marseilles, or Leghorn. In this respect, they may almost be regarded as a part of the *private* law of nations. They would be associated naturally with the Public Law of Nations; embracing, of course, the Law of Admiralty, and that other branch which, it is hoped, will remain for ever, a dead letter, — the Law of Prize.

The Committee believe that all who hear this statement will agree, that something ought to be done to commemorate the obligation of the University to one of its most eminent professors and largest pecuniary benefactors. They have ventured to make suggestions with regard to the manner in which this may be accomplished, not with any pertinacious confidence in their own views, but simply as a mode of opening the subject, and bringing it to your best attention. In dwelling on the propriety of creating a new and permanent professorship, they do not wish to be understood as expressing a preference for this form of acknowledgment. It may well be a question, whether the services of Professor Story, — important in every respect, — shedding upon the Law School a lasting fame, and securing to it pecuniary competence, an extensive library, and a commodious hall, — can be commemorated with more appropriate academic honors, than by giving his name to that department of the University of which he has been the truest founder. The world, in advance of any formal action of the University, has already placed the Law School in the illumination of

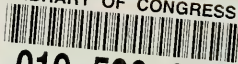
his name. It is by the name of STORY that this seat of legal education has become known wherever jurisprudence is cultivated as a science. By his name it has been crowned abroad.

For the Committee,

CHARLES SUMNER.

To the Overseers of Harvard University.

LIBRARY OF CONGRESS



0 019 596 804 4